

VOLUME 7B, CHAPTER 17: “BANKRUPTCIES”

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue, and underlined font**.

The previous version dated July 2013 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and ensured format complied with current administrative standards.	Revision
170101.B	Added last sentence to provide a point of contact to address any questions concerning collecting a debt when a debtor has filed bankruptcy.	Revision
170205 and 170206	Replaced "Wage Earner's Plan" with “plan.” Title 11 of the United States Code, Chapter 13, subchapter II is now called “The Plan.”	Revision
170301	Provided current commercial Fax number.	Revision
170302	Added “alimony arrears” to the list of involuntary allotments, garnishments, or debt collections that are not terminated unless the bankruptcy order requires it.	Revision

Table of Contents

VOLUME 7B, CHAPTER 17: “BANKRUPTCIES” 1

1701 GENERAL 3

 *170101. Overview 3

 170102. Authoritative Guidance 3

1702 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME,
BANKRUPTCY, CHAPTER 13 (THE PLAN) 4

 170201. Repayment Plan..... 4

 170202. Provisions 4

 170203. Authority 4

 170204. Retired Pay 4

 *170205. Judicial Determination 4

 *170206. Delinquent Taxes..... 4

1703 PROCEDURES 5

 *170301. Bankruptcy Notices and Withholding Orders 5

 *170302. Case Review and Execution of Bankruptcy Withholding Order 5

BIBLIOGRAPHY 7

CHAPTER 17

BANKRUPTCIES

1701 GENERAL

*170101. [Overview](#)

This chapter applies to military retirees who have filed a bankruptcy petition under [Title 11 United States Code \(U.S.C.\), Chapter 7](#), or [11 U.S.C., Chapter 13](#) of the Bankruptcy Code (Note: Scroll down on links to [Chapter 7](#) and [Chapter 13](#)). The law waives the United States Government's sovereign immunity for purposes of compliance with payroll deduction orders issued by the bankruptcy courts. Accordingly, the Defense Finance and Accounting Service (DFAS) will honor the bankruptcy [withholding](#) orders.

A. [Voluntary Bankruptcy](#). Military retirees may seek protection of voluntary bankruptcy as "debtors," a class of persons specified in [11 U.S.C. 101](#), entitled to the benefits of voluntary bankruptcy.

* B. [Automatic Stay Provisions](#). Continued deduction from the retiree's pay of most types of debts owed to the United States after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Such amounts withheld after the date the bankruptcy petition is filed must be refunded to the retiree's pay account. The automatic stay provisions of the bankruptcy statute do not preclude continued deductions based on court-ordered support obligations or divisions of retired pay. [Coordinate with the DFAS Office of General Counsel \(OGC\) - Garnishment Operations, if there are any questions about collecting a debt when a debtor has filed bankruptcy.](#)

C. [Proof of Claim](#). Upon notice or actual knowledge of the filing of a bankruptcy petition, when the retiree has listed the United States Government as a creditor, DFAS-Cleveland, Retired and Annuitant Pay Operations, will file [B10 \(Official Form 10\)](#), Proof of Claim, with the Bankruptcy Court concerned.

D. [Post-Petition Debt](#). A new item of indebtedness incurred after the filing of the bankruptcy petition is known as a post-petition debt. Post-petition debt [collection](#) should be coordinated with the DFAS Office of General Counsel - Garnishment Operations, prior to taking any action.

170102. [Authoritative Guidance](#)

[The bibliography at the end of this chapter lists the authoritative references.](#)

1702 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

170201. Repayment Plan

A retiree may file a petition with the court to enter into a “Chapter 13 plan” under the Bankruptcy Code (11 U.S.C.). Under 11 U.S.C., Chapter 13, a retiree must submit a proposed repayment plan to the bankruptcy court [that](#) provides, among other things, that all or a specified amount of future income as is necessary to pay priority claims under the plan, are under the control of the bankruptcy trustee. The plan will provide for the submission of such earnings or wages to the supervision and control of the court for the purpose of enforcing the plan.

170202. Provisions

When the plan is confirmed by the court, its provisions are binding upon the debtor and all creditors of the debtor, whether they are affected by the plan, have accepted it and have filed their claims, or whether their claims have been scheduled or allowed, or are allowable.

170203. Authority

The court has authority to issue orders needed to implement the provisions of the plan including orders directed to an employer of the debtor.

170204. Retired Pay

The retired pay of a retiree [may be](#) used to pay the Chapter 13 plan and is payable to the trustee appointed by the court. The payment by DFAS of part of the retiree’s pay in response to a court order issued in a Chapter 13 plan does not [conflict with 31 U.S.C. 3713](#) (Priority of Government Claims). Compliance with such a court order gives the government a valid acquittance against the retiree since the court order is binding on the retiree.

*170205. Judicial Determination

If the United States [Government](#) is a creditor when the retiree files a Chapter 13 [plan](#), the Government’s priority under 31 U.S.C. 3713 may be asserted in the absence of a judicial determination to the contrary.

*170206. Delinquent Taxes

A retiree who is participating in a Chapter 13 [plan](#) must pay the delinquent taxes which he or she owes that had not been assessed before the date of confirmation of the plan. The retiree also is responsible for all taxes that may become due. The United States may accept the provisions of any plan that includes the assumption, settlement, or payment of any such delinquent taxes.

A. When DFAS-Cleveland, Retired and Annuitant Pay Operations, sends the entire amount of the retiree's pay to the court-appointed trustee, the Internal Revenue Service (IRS) Notice of Levy should be forwarded to the court-appointed trustee for disposition.

B. When DFAS-Cleveland, Retired and Annuitant Pay Operations, sends part of the pay due the retiree to the court-appointed trustee, the IRS Notice of Levy should be processed in the normal manner against the amount due the retiree. The court-appointed trustee is provided a copy of the IRS Notice of Levy and notified of the action taken in establishing the liquidation procedures on a continuing Notice of Levy.

1703 PROCEDURES

*170301. Bankruptcy Notices and Withholding Orders

All bankruptcy notices and withholding orders should be submitted or faxed to:

DFAS-Cleveland
Garnishment Operations
P.O. Box 998002
Cleveland, OH 44199-8002

Commercial Fax: (877) 622-5930
(216) 367-3675

DFAS-Cleveland Garnishment Operations is the designated agent for service of process for all military retiree bankruptcy notices and withholding orders.

A. The following information should be included with the withholding order:

1. Full name and
2. Full social security number.

B. The notice is effective when it is received in the office of the designated official.

C. When the notice does not sufficiently identify the retiree, it will be returned directly to the person who submitted the order with an explanation of the deficiency.

*170302. Case Review and Execution of Bankruptcy Withholding Order

Upon receipt of notice of a bankruptcy, together with all the required information, the office of the designated official will review the case to determine if there are any involuntary allotments, garnishments, or debt collections that must be terminated as a result of the automatic stay (child support, alimony, child support arrears, [alimony arrears](#), and division of property awards are not terminated unless the bankruptcy order requires it). If a [bankruptcy](#) withholding

order is submitted, the office of the designated official will establish the withholding against the retiree's pay to comply with the bankruptcy order within 30 days. Withholdings will continue until the amount specified in the order is collected, or the order is canceled or suspended.

A. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the retiree stating this fact.

B. The letter will inform the retiree the date that the **bankruptcy** withholding is scheduled to begin and the amount or percentage that will be deducted.

C. When the retiree identified in the order is found not to be entitled to money due from or payable by DFAS, the designated official will return the order to the person who submitted it and advise him or her that no money is due from or payable by DFAS to the named individual. When it appears that amounts are exhausted temporarily or otherwise, unavailable, the authorized person **must** be told why and for how long any money is unavailable, if known.

BIBLIOGRAPHY

CHAPTER 17 – BANKRUPTCIES

1701 – GENERAL

170102	11 U.S.C. 106
170103	11 U.S.C. 362
170104	11 U.S.C. 501
170105	11 U.S.C. 1305

1702 – ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME,
BANKRUPTCY, CHAPTER 13 (THE PLAN)

170201	11 U.S.C. 1301-1330
170202	11 U.S.C. 1327
170203	11 U.S.C. 105
170204	11 U.S.C. 1326
170205	31 U.S.C. 3713
	47 Comp Gen 522 (1968)
	<u>US vs. Shannon</u> , 342 US
	288 (1951)
170206	31 U.S.C. 3713
	47 Comp Gen 522

1703 – PROCEDURES

170302	10 U.S.C. 1408(a)(2)
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